IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
August 26, 2009 Session

# STATE OF TENNESSEE v. JAMES VERNON WRIGHT

**Appeal from the Criminal Court for Hancock County**
**No. 08CR2870 John F. Dugger, Jr., Judge**

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**No. E2009-00109-CCA-R3-CD - Filed February 18, 2010**

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Following the Hancock County Criminal Court's denial of his motion to suppress, the Defendant, James Vernon Wright, entered guilty pleas to driving under the influence (DUI) and driving on a suspended license. The Defendant received an effective sentence of eleven months and twenty-nine days, suspended after the service of ten days incarceration and the payment of five hundred and sixty dollars in fines. Pursuant to Rule 37(b)(2)(A) of the Tennessee Rules of Criminal Procedure, the Defendant reserved a certified question of law challenging the legality of his detention. Following our review, we affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed.**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and CAMILLE R. MCMULLEN, J., joined.

Douglas T. Jenkins, Rogersville, Tennessee, attorney for appellant, James Vernon Wright.

Robert E. Cooper, Jr., Attorney General and Reporter; Matthew Bryant Haskell, Assistant Attorney General; C. Berkeley Bell, District Attorney General; and Connie Trobaugh, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

## OPINION

Detective Anthony Maxey of the Bean Station Police Department and Trooper Jason Maxey of the Tennessee Highway Patrol testified at the suppression hearing. The Maxeys are distant relatives. On December 14, 2007, Detective Maxey was an off-duty, part-time

Deputy with Hancock County. On his way home, Detective Maxey observed the Defendant "crossing the centerline [and] weaving back and forth." The Defendant stopped in front of the Detective and allowed the Detective to drive by only to pass him a few moments later. Detective Maxey followed the vehicle for several miles before calling Trooper Maxey on his cell phone to report a possible drunk driver.

Detective Maxey told Trooper Maxey that he observed the Defendant driving erratically and that the Defendant was possibly driving under the influence. Detective Maxey described the vehicle and also gave Trooper Maxey the Defendant's license plate number. Trooper Maxey caught up with the Defendant on Chinquapin Road. He followed the Defendant for a few miles and observed the Defendant "cross the centerline several times" and come "up on the centerline several times." At that point, Trooper Maxey initiated his blue lights.

When the Defendant pulled over, Trooper Maxey observed that the Defendant "was unsteady exiting his vehicle, his speech was slow and slurred, he had a very strong odor of alcoholic beverage about his person, his eyes were bloodshot and watery, [and] he was unsteady on his feet." The Defendant also performed poorly on several field sobriety tests. Trooper Maxey arrested the Defendant and found eight empty 12-ounce beer cans and five unopened 12-ounce beer cans in the vehicle. The Defendant agreed to take a breath-alcohol test, but he would not blow properly into the machine.

Based upon this evidence and Trooper Maxey's cruiser video, the trial court denied the Defendant's motion to suppress. The trial court stated:

> I cannot find that the driving on that country road was totally erratic. It's not good to cross the centerline, but what the Court has to consider is was there reasonable suspicion that criminal activity was afoot, reasonable suspicion.
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> . . .
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> [The Defendant] did cross the centerline, the double centerline, twice, once shortly before a sharp turn to the right. And that based on the facts that this trooper had received from this citizen informant who[m] he knew to be a reliable person and trained, and that information along with his observations, the Court feels that there was reasonable suspicion to believe that criminal activity was afoot and that he had a duty to at least investigate it to determine whether it was a possible intoxicated driver.

The Defendant entered guilty pleas and reserved for appeal the certified questions of whether the trial court erred in (1) finding that Trooper Jason Maxey had reasonable suspicion to stop the vehicle of Defendant or that the community caretaking function authorized the stop and (2) overruling the Defendant's motion to suppress which was filed on July 30, 2008 and heard by the court October 27, 2008.

## ANALYSIS

Tennessee Rule of Criminal Procedure 37 permits a criminal defendant to plead guilty and appeal a certified question of law when the defendant has entered into a plea agreement under Rule 11(a)(3) of the Rules of Criminal Procedure and has "explicitly reserved - with the consent of the state and of the court - the right to appeal a certified question of law that is dispositive of the case." Tenn. R. Crim. P. 37(b)(2)(A). As a prerequisite to this court's review, the final order or judgment appealed from must contain a statement of the certified question that clearly identifies the scope and legal limits of the question, including the agreement by both the defendant, the trial court, and the state that the question is dispositive of the case and is explicitly reserved for appellate review as part of the plea agreement. State v. Preston, 759 S.W.2d 647, 650 (Tenn. 1988). Our review of the record in this case indicates that the Defendant properly reserved this question.

A trial court's findings of fact on a motion to suppress are conclusive on appeal unless the evidence preponderates against them. State v. Binette, 33 S.W.3d 215, 217 (Tenn. 2000). Questions about the "credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). The prevailing party "is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." Odom, 928 S.W.2d at 23. Furthermore, an appellate court's review of the trial court's application of law to the facts is conducted under a de novo standard of review. State v. Walton, 41 S.W.3d 75, 81 (Tenn. 2001) (citations omitted).

The Defendant argues that the State used the community caretaking function to justify the stop of the vehicle. The State argues that the community caretaking function is inapplicable to this case because the trial court denied the motion to suppress upon finding that Trooper Maxey had reasonable suspicion to stop the Defendant.

We must first note that this court does recognize this type of interaction between a police officer and a citizen. This exception allows an officer "without either reasonable suspicion or probable cause" to "approach a vehicle for the purpose of assessing the safety or welfare of a stopped vehicle's occupants." State v. Huecker, No. E2008-00448-CCA-R3-

CD, 2009 WL 2951258, at *3 (Tenn. Crim. App. Sep. 15, 2009). These are consensual encounters which permit a police officer to "engage a citizen and ask questions as long as the citizen is willing to carry on the conversation." State v. Hawkins, 969 S.W.2d 936, 936 (Tenn. Crim. App. 1997) (citing State v. Butler, 795 S.W.2d 680, 685 (Tenn. Crim. App. 1990)). However, we conclude that the community caretaking function is inapplicable to the facts of this case. In this case, the trial court found that Trooper Maxey had reasonable suspicion to stop the Defendant based on a citizen complaint from Detective Maxey and Trooper Maxey's own observations.

The Defendant also argues that the "investigatory stop which led to his arrest was not based upon reasonable suspicion and was in violation of the Fourth Amendment of the United States Constitution and [a]rticle I, [s]ection 7 of the Tennessee Constitution." The State contends that Trooper Maxey had reasonable suspicion to stop the Defendant.

The Fourth Amendment to the United States Constitution and article I, section 7 of the Tennessee Constitution protect against unreasonable searches and seizures. Any warrantless search or seizure is presumed to be unreasonable and requires the State to prove by a preponderance of the evidence that the search or seizure was conducted pursuant to an exception to the warrant requirement. State v. Simpson, 968 S.W.2d 776, 780 (Tenn. 1998). However, a police officer may make an investigatory stop based upon reasonable suspicion, supported by specific and articulable facts, that a criminal offense has been or is about to be committed. Terry v. Ohio, 329 U.S. 1, 20-21 (1968); Binette, 33 S.W.3d at 218.

A police officer must have such a reasonable suspicion in order to stop a vehicle without a warrant. State v. Randolph, 74 S.W.3d 330, 334 (Tenn. 2002). Our supreme court has stated that "when an officer turns on [his] blue lights" a stop has occurred. State v. Pulley, 863 S.W.2d 29, 30 (Tenn. 1993). Reasonable suspicion is determined by an examination of the totality of the circumstances. Binette, 33 S.W.3d at 218. Circumstances relevant to an analysis of reasonable suspicion include "the officer's objective observations [and any] [r]ational inferences and deductions that a trained officer may draw from the facts and circumstances known to him." State v. Yeargan, 958 S.W.2d 626, 632 (Tenn. 1997).

In Tennessee, our appellate courts have often upheld the validity of traffic stops based in part on citizen complaints. See generally State v. Harold Russell Gregory, No. M2002-01461-CCA-R3-CD, 2003 WL 21766250 (Tenn. Crim. App. Jul. 29, 2003) (upholding search where complainant notified dispatch about possible drunk driver; dispatch relayed this information to officer, who located driver and pulled over driver after seeing driver cross double yellow line); State v. James Michael Davis, No. E2001-01656-CCA-R3-CD, 2002 WL 1971847 (Tenn. Crim. App. Aug. 26, 2002) (upholding search where officer witnessed vehicle parked late at night in area known for prostitution and illicit drug activity; officer saw

woman leaning into car window, and after driver pulled away, woman motioned at officer to pursue defendant, which he did).

Upon receiving information that the Defendant was possibly driving under the influence, Trooper Maxey began following the Defendant. Trooper Maxey, whose testimony was credited by the trial court, then observed the Defendant drive with his left-side tires on the double yellow line and cross the center-line at least twice, thus providing Trooper Maxey with specific and articulable facts to support his reasonable suspicion that the Defendant was driving under the influence. Accordingly, we affirm the trial court's denial of the motion to suppress.

## CONCLUSION

In consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

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D. KELLY THOMAS, JR., JUDGE